

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DENNIS MASSARI,

Plaintiff,

v.

23-CV-446 (JLS) (MJR)

PAUL RYERSE, individually and in his
capacity as the Code Enforcement
Officer for the Town of Evans,
CHARLES L. LABARBERA,
individually and in his capacity as the
Code Enforcement Officer for the Town
of Evans, JESSE GILBERT,
individually and in his capacity as the
Code Enforcement Officer for the Town
of Evans, JOSEPH BOBERG,
individually and in his capacity as the
Code Enforcement Officer for the Town
of Evans, RICHARD VACILE,
individually and in his capacity as an
employee for the Town of Evans, and
TOWN OF EVANS,

Defendants.

DECISION AND ORDER

Plaintiff Dennis Massari commenced this action against Defendants, individually and in their capacities as employees or officers of the Town of Evans, alleging that Defendants violated Plaintiff's constitutional rights when they filed several false criminal charges against him. *See* Dkt. 1. Defendants filed a motion to dismiss on July 24, 2023 (Dkt. 10), and this Court adopted Judge Roemer's¹

¹ This Court referred the case to United States Magistrate Judge Michael J. Roemer



Report and Recommendation (R&R)—granting the motion to dismiss in part, with leave to amend, and denying it in part as to the following claims: (1) the section 1983 malicious prosecution claim against Defendant Gilbert, with respect to the December 27, 2019 charges; (2) the section 1983 malicious prosecution claim against Defendant Boberg with respect to the February 23, 2022 charges; and (3) the section 1983 abuse of process claim against Defendant Boberg with respect to the February 23, 2022 charges. *See* Dkt. 27, at 3.

Plaintiff filed an amended complaint on June 6, 2024. Dkt. 29. And Defendants moved to dismiss, in part, as to the claims this Court granted Plaintiff leave to amend on. Dkt. 31.

On February 4, 2025, Judge Roemer issued an R&R, recommending that this Court grant Defendants' motion, without leave to amend. Dkt. 41, at 31. Plaintiff objected to the R&R. Dkt. 42. Defendants responded (Dkt. 44), and Plaintiff replied. Dkt. 45.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3).

for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 12.

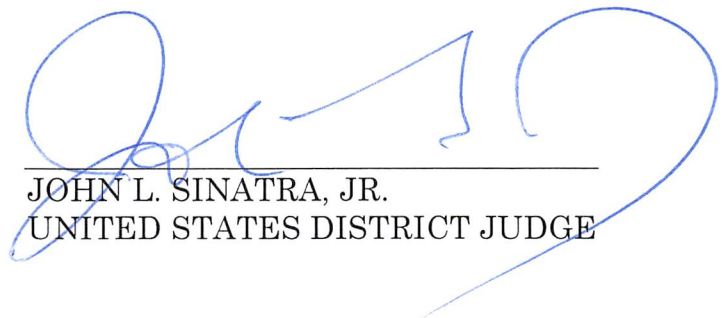
This Court carefully reviewed Judge Roemer's R&R, the objections briefing, and the relevant record. Based on its *de novo* review, the Court accepts and adopts the R&R's recommendations.

For the reasons stated above, and in the R&R, the Court GRANTS Defendants' motion to dismiss the amended complaint, in part, without leave to amend.

Plaintiff may proceed only as to: (1) the section 1983 malicious prosecution claim against Defendant Gilbert, with respect to the December 27, 2019 charges; (2) the section 1983 malicious prosecution claim against Defendant Boberg, with respect to the February 23, 2022 charges; and (3) the section 1983 abuse of process claim against Defendant Boberg with respect to the February 23, 2022 charges. *See* Dkt. 41, at 31. The case is referred back to Judge Roemer consistent with the July 26, 2023 referral order. *See* Dkt. 12.

SO ORDERED.

Dated: June 26, 2025
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE